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SANITEC TIMELINE

1. 2/99 HS Holdings, owner of Sanitec, sold to SICC (NJ)
2. 3/99 SICC (NJ) issues only stock certificate to SIH (NV)
3. 2/99 SIH (NV) issues stock certificate to T. Quinn making Quinn the sole owner of Sanitec, Inc.
4. 4/01 Reorganization of Sanitec companies by Lowenstein Sandler at the direction and control of TQ.
5. 4/01 Companies merged into Sanitec, Inc. which changed its name to Sanitec, Ltd.
6. 4/01 Sanitec, Ltd. issues shares only to Sanitec Worldwide.
7. 7/17/01 Quinn forms Windsor Holdings through attorney Mitch Miller.
8. 7/29/01 Sanitec Worldwide issues only shares to Windsor Holdings, T. Quinn retaining full control and ownership.
9. 7-8/01 Quinn asks Kaye if he would be manager of Windsor Holdings upon a possible sale of Sanitec, Ltd.
10. 10/12/01 Kaye writes Quinn a memo. Says he understands Quinn is the "actual controlling shareholder of Windsor" and agrees to execute the Eden term sheet as Managing Member of Windsor "as an accommodation" to Quinn if Quinn would indemnify him from "any liabilities that may arise due to my representing myself as the managing member..."
11. 10/31/02 Kaye signs term sheet as managing member of Windsor.
12. 1/03/02 Kaye signs corporate resolution as Managing Member.
13. 5/13/02 Quinn sends Kaye a letter terminating him from any role he might have had as managing member.
14. 6/24/02 Windsor Trust created and Quinn transfers in 100% of his ownership interest in Windsor Holdings.
15. 7/7/03 Smith writes termination letter to Climaco because his proposed settlement will take all assets from Sanitec, cheating Sanitec Ltd. creditors and shareholders.
16. 7/14-7/15/03 Climaco demands Babos, Kaye and Harkess present documentary evidence as to who owns and controls Sanitec Ltd. And Windsor Holdings.

17. 7/15- Babos, Kaye and Harkess fabricate documents creating the  
7/17 appearance that Kaye was the member and manager of Windsor  
and had transferred total ownership of Windsor to Harkess back  
on November 21, 2002.
18. 9/03 Terry Quinn returns home. Discovers false documentation  
contrary to his intentions via the Windsor Trust.
19. 12/03- Babos attempts to get all parties to correct mistakes and resolve  
1/04 other issues. His attempts are ignored by Harkess, Kaye, et al.
20. 5/04 Quinn advises Mitch Miller, the original attorney and organizer  
for Windsor Holdings, to finalize ownership and control of  
the company in the name of the Windsor Trust.

\*\*\*

PROOF OF SERVICE

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 South Los Robles Avenue, Ste 630, Pasadena, California 91101-2432.

On April 21, 2005 the foregoing document, described as POST TRIAL BRIEF on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

Michael J. Hartley  
Weston Benshoof et al LLP  
333 S. Hope Street 16FL  
Los Angeles, CA 90071-1406

☐ BY FACSIMILE TRANSMISSION from FAX No. (626) 795-1616 to the fax numbers set forth above.

☐ The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(j), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☐ BY EXPRESS SERVICE: I caused such document to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

☒ BY MAIL as follows:

☐ placing a true copy thereof in a sealed envelope addressed as stated on the ATTACHED MAILING LIST.

☒ placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as set forth above.

☐ I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

☒ I am 'readily familiar' with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE as follows: I delivered such envelope by hand to the offices of the addressee.

☐ FEDERAL - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒ STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 21, 2005 at Pasadena, California.

  
Michael J. Hartley

1 **SLATER HATHAWAY LLP**

2 ATTORNEYS

3 200 SOUTH LOS ROBLES AVENUE, SUITE 530

PASADENA, CALIFORNIA 91101-2432

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5 **MARK M. HATHAWAY SBN 151 332**  
6 Attorneys for SANITEC WORLDWIDE, LTD

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAR 18 2005

John A. Clarke, Executive Officer/Clerk  
By D. GILES, Deputy

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10 BC330527

11 JAMES H. SMITH, co-trustee of THE  
12 WINDSOR TRUST, dated June 21, 2002,  
13 a California irrevocable trust,

14 Plaintiff,

15 v.

16 JAMES R. HARKESS, an individual,  
17 DAVID KAYE, an individual, MARK J.  
18 RICHARDSON, an individual, LAURA  
MURTAGH, an individual, and DOES 1-  
25,

19 Defendants.  
20

Case No.

COMPLAINT FOR DAMAGES:

- 1) Fraud; and  
2) Conversion

21  
22 COMES NOW Plaintiff THE WINDSOR TRUST, dated June 24, 2002 (hereafter  
23 sometimes the "TRUST"), which alleges claims against Defendants, and each of them, as  
24 follows:

25 INTRODUCTION

26 Plaintiff maintains that it is the rightful owner of Windsor Holdings, LLC.,  
27 (hereafter sometimes "Windsor"), a California limited liability company. Defendant James  
28 R. Harkess ("hereafter "Harkess") claims he is the rightful owner of Windsor. A separate

1 action for declaratory relief between Plaintiff and Defendant Harkess is now pending in  
 2 Los Angeles Superior Court identified as Case No. BC311681. Plaintiff has the right to  
 3 bring this separate action pursuant to California Code of Civil Procedure, Section 1062.

4 Plaintiff maintains in this action that Defendant Harkess, with the assistance of the  
 5 other Defendants named herein, wrongfully converted the corporate books and records of  
 6 Windsor in or about July of 2003, and illegally declared himself as the 100% sole owner of  
 7 Windsor by directing the false issuance of a stock certificate in his name. Such fraudulent  
 8 conduct and theft of Plaintiff's true ownership of Windsor has substantially affected  
 9 Plaintiff's title, rights, interest, benefits and control in and to valuable assets, including the  
 10 intellectual property rights to certain patents and trademarks in the field of medical waste  
 11 treatment processes.

12 Plaintiff seeks monetary damages in this action for Defendant's intentional and  
 13 wrongful conduct. These damages are separate, distinct, and in addition to the declaratory  
 14 relief it seeks in the other pending action referenced above.

#### 15 16 GENERAL ALLEGATIONS

17 1. Plaintiff, the TRUST, is a valid irrevocable trust in good standing,  
 18 organized in accordance with and pursuant to the laws of the State of California, having as  
 19 its co-trustee James H. Smith herein, a resident of the County of San Mateo, State of  
 20 California.

21 2. Plaintiff is informed and believes, and based thereon alleges, that at all times  
 22 herein mentioned, Defendant JAMES R. HARKESS (hereafter sometimes "HARKESS")  
 23 was and is a resident of the County of Los Angeles, State of California.

24 3. Plaintiff is informed and believes, and based thereon alleges, that at all times  
 25 herein mentioned, Defendant MARK J. RICHARDSON (hereafter sometimes  
 26 "RICHARDSON") was and is a resident of the County of Los Angeles, State of  
 27 California, and an attorney at law duly licensed to practice in the State of California.

28 4. Plaintiff is informed and believes, and based thereon alleges, that at all times

1 herein mentioned, Defendant LAURA MURTAGH (hereafter sometimes "MURTAGH")  
2 was and is a resident of the County of Los Angeles, State of California, and an attorney at  
3 law duly licensed to practice in the State of California..

4 5. Plaintiff is informed and believes, and based thereon alleges, that at all times  
5 herein mentioned, Defendant DAVID KAYE (hereafter sometimes "KAYE") was and is a  
6 resident of the County of Los Angeles, State of California.

7 6. The true names and capacities of Does 1 through 25, inclusive, are unknown  
8 to Plaintiff who, therefore, sues such Defendants by such fictitious names, and Plaintiff  
9 will amend this complaint to show their true names and capacities when the same has been  
10 ascertained. Based on information and belief, each of the fictitiously named Defendants  
11 acted as an agent, employee, servant, principal, partner, shareholder, or co-conspirator of  
12 the other Defendants, or is otherwise responsible for the acts and omissions alleged in this  
13 complaint.

14 7. Plaintiff is informed and believes, and based thereon alleges, that at all  
15 times herein mentioned, Defendants, and each of them, were the agents, employees,  
16 servants, principals, partners, shareholders, or co-conspirators of the other Defendants,  
17 acted within the scope of their authority as such agents, employees, servants, principals,  
18 partners, shareholders, or co-conspirators of the other Defendants, and approved and  
19 ratified the alleged acts and omissions of the other Defendants.

20 8. Plaintiff is the sole owner of all the stock and assets of Windsor Holdings,  
21 LLC, a California corporation. Windsor Holdings is the majority shareholder of a  
22 Delaware corporation known as Sanitec Worldwide, Ltd. ("Worldwide"). Worldwide is  
23 the sole owner of all the stock and assets of Sanitec, Ltd. ("Limited"), a Delaware  
24 corporation. Limited's assets include the ownership of intellectual property rights to  
25 certain patents and trademarks relating to a line of microwave disinfection systems for  
26 medical waste treatment (hereafter the "Sanitec Technology").  
27  
28

FIRST CAUSE OF ACTION

(Fraud and Deceit based on False Promises against all Defendants)

9. Plaintiff hereby repeats and realleges paragraphs 1 through 8 of the General Allegations, and incorporate the same herein by reference as though set forth in full hereat.

10. At all times herein mentioned, Plaintiff's settlor and assignor, Terrance Quatkemeyer aka Terrance Quinn (hereafter "Quinn"), had retained as his attorney and legal representative Peter J. Babos (hereafter "Babos"). Babos at all times herein mentioned was aware of the events and circumstances surrounding the incorporation of Windsor. He also knew that Quinn was the originator and real owner of Windsor which was organized on or about July 17, 2001.

11. From the period of January through June of 2003, Defendants, and each of them, engaged in a campaign to steal and wrestle away the ownership of Windsor from Quinn and Plaintiff herein. Defendants knew full well that Windsor was the true and legal majority shareholder of Worldwide, and that Worldwide was the sole shareholder and owner of Limited. Defendants further knew full well that Limited was the true and full owner of all of the Sanitec Technology. Therefore, Defendants knew full well that Windsor, as the majority shareholder of Worldwide, would be deemed the true and correct legal owner of the Sanitec Technology. Throughout this time period culminating in July of 2003, Defendants conspired to have defendant Harkess come to be the recognized owner of Windsor by drafting false corporate documents evidencing such wrongful ownership.

12. In or about July of 2003, while Quinn was incarcerated in federal prison in the State of Texas, and while Defendants knew such facts, including Babos and Quinn's inability to communicate with each other, Defendants falsely and fraudulently represented to Babos, acting on behalf of Quinn as his attorney, the following:

a) that the ownership of Windsor was critical in determining the rightful owner to the Sanitec Technology, and that since Quinn was imprisoned, it was imperative that HARKESS should own and control the rights to the Sanitec Technology;

b) that the ownership of Windsor was critical in determining the effect and



1 outcome of certain litigation pending in Ohio federal court affecting Sanitec, Ltd. Windsor,  
2 and other Sanitec related entities;

3 c) that documents needed to be prepared to demonstrate that HARKESS was the  
4 owner of Windsor;

5 d) that before Quinn left to serve his sentence, he had told HARKESS and KAYE  
6 that they could decide who would have to hold title to the stock of Windsor if that became  
7 absolutely necessary; and,

8 e) that upon Quinn's return from serving his sentence, HARKESS and KAYE  
9 would immediately return the rightful and legal ownership of Windsor, and the original  
10 books and records of the company, to Quinn.

11 13. The above representations made by defendants, and each of them, were  
12 false, fraudulent, and were known to Defendants to be false at the time they were made.  
13 Plaintiff is informed and believes that BABOS, acting on behalf of Quinn at that time as  
14 his attorney, was ignorant of the falsity of said representations, and instead believed them  
15 to be true. The true facts were and are that:

16 a) that Quinn never expressed to Defendant HARKESS or KAYE that they could  
17 decide who could hold title to the stock of Windsor if that became absolutely necessary, or  
18 at any time whatsoever;

19 b) that HARKESS never intended to relinquish ownership of Windsor back to  
20 Plaintiff or its settlor, Quinn;

21 c) that HARKESS intended to steal all ownership, management, and control over  
22 Windsor, the Sanitec Technology, and all other related Sanitec entities for his own self  
23 gain.

24 14. The representations alleged by Plaintiff hereinabove were made by  
25 Defendants, and each of them, with intent to deceive, defraud, and induce BABOS to act in  
26 reliance on these representations in the manner hereafter alleged, and with the expectation  
27 that BABOS would so act.

28 15. At all times material hereto, Babos was ignorant of the falsity of defendants'



1 representations and believed them to be true. Based on the continuing representations and  
 2 assurances asserted by Defendants, BABOS justifiably relied upon these representations,  
 3 and was further induced to and did take the following action:

4 a) obtain and transfer to Defendants KAYE and HARKESS the original corporate  
 5 books and records of Windsor;

6 b) cooperate with Defendants and assist in the preparation of such false corporate  
 7 documents establishing stock ownership in the name of HARKESS;

8 c) represent to litigation counsel for Windsor and other Sanitec related entities that  
 9 HARKESS was the true owner of Windsor although he was not, and that HARKESS and  
 10 KAYE had the authority to act for other Sanitec related entities, which they did not.  
 11 Had BABOS known the true facts, BABOS would not have taken the action set forth  
 12 above, nor otherwise act as alleged herein.

13 16. As a direct and proximate result of BABOS' justifiable reliance upon the  
 14 truth of the false representations, promises, and assurances made by Defendants as alleged  
 15 hereinabove, Plaintiff has sustained substantial economic loss and damages in an amount  
 16 not yet ascertained, but believed to exceed the sum of \$1,000,000, and according to proof  
 17 at time of trial.

18 17. In doing the acts alleged herein, Defendants, and each of them, acted with  
 19 fraudulent intent, malice, and oppression. Such conduct was despicable subjecting plaintiff  
 20 to  
 21 cruel and unjust hardship in conscious disregard of Plaintiff's known rights. By reason of  
 22 such conduct by Defendants, Plaintiff is entitled to an award of exemplary and punitive  
 23 damages in an amount according to proof at time of trial.

## 24 SECOND CAUSE OF ACTION

25 (For Conversion against all Defendants)

26 18. Plaintiff hereby repeats and realleges Paragraphs 1 through 8 of the General  
 27 Allegations, and Paragraphs 10 and 11 of the First Cause of Action, and incorporate the  
 28

1 same herein by reference as though set forth in full hereat.

2 19. On or about July 17, 2003, Defendants engaged in the preparing and signing  
3 of certain legal corporate documents having the affect of bestowing 100% of the entire  
4 stock ownership of Windsor to defendant HARKESS.

5 20. Plaintiff is informed and believes, and based thereon alleges, that at all  
6 times herein mentioned, Defendants, and each of them, had full knowledge that Defendant  
7 HARKESS was not the true owner of Windsor; that he had no legal basis for asserting any  
8 claim to ownership; that Quinn was the original creator of Windsor and its original rightful  
9 owner; that Quinn never consented to or authorized the transfer of the ownership of  
10 Windsor to HARKESS; that KAYE had no title, power, or authority to act on behalf of  
11 Windsor as a Member or as its Manager; among other things.

12 21. The acts committed by Defendants, and each of them, as set forth above  
13 constitute an unlawful taking and conversion of the rightful stock ownership of Windsor  
14 owned and belonging to Plaintiff herein.

15 22. Plaintiff has demanded that Defendants return the above described property,  
16 including the original of the Certificate of Interest reflecting ownership in Windsor  
17 wrongfully placed in the name of HARKESS, and further demanded that Defendants cease  
18 representing that Defendant HARKESS is the owner of Windsor. Defendants have refused  
19 and continue to refuse to return said property and cease making said representations.

20 23. The above described acts constitute a conversion of Plaintiff's property and  
21 property rights. As a proximate result of Defendants' conversion, Plaintiff has suffered  
22 and continues to suffer damages in an amount not yet ascertained but believed to be in  
23 excess of \$1,000,000 and according to proof at time of trial, including costs and attorney's  
24 fees in seeking recovery of its stock ownership in the Windsor.

25 24. The above described acts by Defendants' conversion of the above-described  
26 property were undertaken with the intent to defraud, and done knowingly, willfully, and  
27 with malicious intent, thereby justifying the imposition of exemplary and punitive damages  
28 according to proof at time of trial.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. For general and special damages according to proof;
2. For punitive and exemplary damages according to proof;
3. For attorney's fees and costs incurred herein; and
4. For such other relief as the court may deem just and proper.

Dated: March 18, 2005.

Respectfully submitted,

SLATER HATHAWAY, LLP

By Original Signed By:  
Mark M. Hathaway, Esq.  
Attorneys for Plaintiff  
THE WINDSOR TRUST,  
dated June 24, 2002

**EXHIBIT B**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

JAMES HARKESS,

Plaintiff,

v.

TERRENCE QUINN aka TERRANCE LEE  
QUATKEMEYER, and DOES 1 through 10,  
inclusive,

Defendants.

Case No.: BC 311681

TENTATIVE RULING  
AND (PROPOSED)  
STATEMENT OF DECISION

AND RELATED ACTION.

The court finds FOR PLAINTIFF/CROSS-DEFENDANT AND AGAINST DEFENDANTS/CROSS-COMPLAINANTS on Plaintiff's Complaint for Declaratory Relief and on Defendants' Cross-Complaint for Declaratory Relief. The court declares that plaintiff James Harkess ("Harkess" herein) is the rightful owner of Windsor Holdings, LLC, ("Windsor" herein) and that defendants have no right, title or interest therein. Further, defendants, and each of them, are permanently enjoined from claiming any right, title or interest in Windsor.

The court finds that the Windsor Trust ("Trust" herein) was not legally in existence and had no assets at the time of the transfer of Windsor from David Kaye ("Kaye" herein) to

Harkess. Defendant Terrence Quinn aka Quatkemeyer ("Quinn" herein), in July 2001, through a series of companies and transactions, none of which bear his name or other indicia of his ownership, transferred ownership and apparent authority to Kaye as managing member of Windsor. Thereafter, back-dated documents were created virtually overnight, transferring ownership of Windsor from Kaye to Harkess in July 2003. This transfer of ownership of Windsor was relied on not only by Harkess, but by many other parties and attorneys, including a federal judge. The court finds that the transfer from Kaye to Harkess was effective to transfer ownership of Windsor to Harkess in July 2003. The court further finds that, in any event, Quinn and those acting on his behalf are barred by the equitable doctrines of unclean hands and equitable estoppel from asserting ownership in Windsor. Any purported ownership claimed by James H. Smith ("Smith" herein) or Jeffrey Weinstein ("Weinstein" herein) is purely derivative based ) on their status as trustees of Trust, and the court has found that the Trust was not legally in existence during the time of the transfer from Kaye to Harkess.

## FACTUAL BACKGROUND

There are many different companies and individuals involved in the various lawsuits here, in Ohio and elsewhere, but the essential entities for purposes of this lawsuit are Windsor, Sanitec Worldwide ("Worldwide" herein) and Sanitec Limited ("Limited" herein). Windsor is a California limited liability company formed on July 17, 2001. Through a series of transfers and a corporate re-organization by Quinn, in late July 2001, Windsor was issued stock equally a 100% ownership interest in Worldwide, and became the sole owner of Worldwide at that point; and Worldwide, in turn, was the sole became, the majority owner of Limited (Weinstein testified that his company, Salem Associates, was issued a minority interest in Worldwide by Quinn in May 2002, but the validity of that interest was not directly before the Court in this case owned a minority interest in Worldwide). (Ex. 189, 223). Whoever owns Windsor controls the other two by virtue of this Ownership structure.

1 This court has been asked to make a finding on a single, narrow question: who owns  
 2 Windsor? The court is mindful that there are other lawsuits in Ohio, and perhaps elsewhere,  
 3 which may be impacted by this decision, and that there may be issues between various  
 4 parties impacted by what the court decides here. Beyond the findings that support the  
 5 Court's decision, however, this court makes no findings regarding the merits of any other  
 6 lawsuits or any purported claims that the parties may have against one another or others.

7 Plaintiff contends that he is the owner of Windsor by virtue of a transfer from Kaye,  
 8 the managing member of Windsor. Defendants contend that the Trust is the owner of  
 9 Windsor. Defendants presented evidence that in June 2002, defendant/cross-complainant  
 10 Quinn was suffering from a terminal illness and was facing an impending prison term, and  
 11 therefore set up the Trust with cross-complainant Smith and Weinsten as the trustees, and  
 12 concurrently therewith transferred all the assets of Windsor to Trust. Therefore, at the time  
 13 of transfer of Windsor from Kaye to Harkess, defendants assert that Windsor had already  
 14 been transferred to the Trust and there was nothing to transfer.

#### 15 16 THE TRUST

17 The circumstances in existence in or about June 2002, that is the illness and the  
 18 impending sentencing, are consistent with a desire by Mr. Quinn to form a trust to hold his  
 19 property. What is missing, however, is a signed original trust document and any credible  
 20 evidence that such a document was ever signed by Quinn in June 2002, or at any time before  
 21 he was released from prison in late September 2003. Also, like the ownership structure that  
 22 Quinn set up for Windsor, the structure he set up for his Trust was also incomplete. The  
 23 final, and necessary, steps were never taken to consummate the Trust.

24  
 25 The court makes the following findings which support its conclusion that no Trust  
 26 was formed in June 2002 or at any time before the Kaye-Harkess transfer.

- 27  
 28 1. The court found Smith to be a credible witness, but by his own testimony and that of



1 others, he was only a figurehead. It was Weinsten that wrote all the letters for him to  
2 sign, and it was Weinsten that monitored the litigation in Ohio. Virtually everything  
3 that Smith knew, he knew because Weinsten told him. He had virtually no firsthand  
4 knowledge of facts.

5  
6 2. There is no original Trust signed by Quinn which bears a date in June 2002. In fact,  
7 no signed original at all was offered in evidence.

8  
9 3. While there is evidence that the Litwin law firm prepared drafts of a trust in June  
10 2002, and Smith signed some version of a trust, Smith testified that he does not know  
11 whether Quinn signed it in June 2002. (Ex. 265)

12  
13 4. Weinsten testified that he sent the Trust document which had been signed by others to  
14 Quinn for him to sign. He did not see Quinn sign the Trust document. ~~had no~~  
15 ~~knowledge whether Quinn signed it or not.~~ Weinsten claims that he received a  
16 signature back from Mr. Quinn in June 2002, but the Court does not find this claim  
17 credible in light of Mr. Weinsten's other testimony (see below). No one had personal  
18 knowledge about whether Quinn ever signed before he was released.

19  
20 5. Quinn testified that he did sign it in June 2002, but the court does not find his  
21 testimony to be credible. On the stand Mr. Quinn repeatedly shifted responsibility for  
22 various actions from himself to his attorneys, and said he would sign virtually  
23 anything his lawyers told him to sign. This, along with his observed demeanor while  
24 testifying, and his two felony convictions for fraud-related offenses, cause the court to  
25 disregard his testimony. Thus, there is no independent, corroborating evidence that  
26 Quinn ever signed before he got out of prison.

27  
28 6. There is no credible evidence that shares or other indicia of ownership of Windsor

1 were ever transferred to the Trust.

2 7. Quinn testified that he fired Kaye as managing member of Windsor in June 2002 by  
3 letter, but there is no evidence other than the testimony of Quinn himself that the letter  
4 was ever sent, and court does not find his testimony credible. Kaye denies ever  
5 receiving it, and the only copy introduced in evidence apparently came from  
6 Weinsten's file.

7  
8 In addition to these points, Weinsten who along with Smith was a co-trustee, denied  
9 twice in depositions in other cases that he knew who owned Windsor. One can infer from  
10 this that he either knew the trust had never been signed by Quinn, or that there was never any  
11 transfer of Windsor assets to the Trust. It was Weinsten who was monitoring the Ohio  
12 litigation and apparently was concerned enough about protecting his 48% interest in  
13 Worldwide that he attempted to intervene in the Ohio litigation. In several pleadings filed in  
14 connection therewith he never mentioned the Trust. (Ex. 118, 122) Even when Smith sent the  
15 letter to John Climaco, Ohio counsel for Limited, et al., he did not mention the Trust. And  
16 finally, the two independent witnesses who may have been able to corroborate the Trust,  
17 attorney Litwin who drafted it, and attorney Mark Geragos (who was allegedly present when  
18 the Trust was signed in his office) were not called by the defendants to testify.

19  
20 The defendants have not met their burden of showing that the Trust was legally  
21 formed and in existence at the time of the Kaye-Harkess transfer.

## 22 23 THE TRANSFER TO HARKESS

24 By virtue of the failure of the Trust to be formed in June 2002, the assets of Windsor  
25 were still in Windsor at the time of the transfer from Kaye to Harkess. In July 2003, never  
26 referencing the Trust in his letter, Smith wrote to Jim Climaco, Esq., Ohio counsel for  
27 Limited and Windsor ("Climaco" herein), claiming that Harkess had no authority to  
28 represent Limited in the Ohio Litigation and that he (Climaco) was discharged as counsel.

1 (Apparently this was one of the letters written for him by Weinstein.) (Ex. 210) In response to  
2 this letter Climaco sent an urgent message to Babos demanding to know who had authority  
3 to speak for Limited and who he should listen to. (Ex. 211.1, 212) He was obviously very  
4 agitated and wanted answers, immediately. He was particularly upset over the fact that he  
5 was being put in a position to embarrass himself before a federal judge. In response to that  
6 inquiry, within hours Babos, with the concurrence of Harkess and Kaye, created back-dated  
7 documents that showed that Harkess was the owner of Limited. (Ex. 163) [ (for Limited) and  
8 Harkess (for Sanitec West) had been managing the Ohio litigation and they needed to show  
9 they had authority to do so. (It is not altogether clear which parties Babes was actually  
10 representing as counsel in all these transactions; Climaco had repeatedly asserted that Quinn  
11 needed separate counsel due to a perceived conflict of interest; Babos had served as  
12 corporate counsel for some of the Sanitec companies and Quinn individually over the years.)  
13 (Ex. 212) These hastily created documents showed that Kaye, acting as managing member  
14 and owner of Windsor, transferred his member/owner status to Harkess. Babos continued to  
15 reaffirm that Harkess was the owner of Windsor for weeks after Quinn was released from  
16 prison in September 2003. He testified that it was only later he realized that he had made a  
17 mistake in having the documents prepared and started making efforts to reverse position. By  
18 then, however, the representations to the Ohio federal court and counsel had already been  
19 made and actions had been taken in reliance on Harkess' apparent authority to represent  
20 Limited, (based on his ownership of Windsor) and commitments had been made and  
21 documents signed.

22  
23 Quinn is responsible for creating the environment and business structure that made  
24 this possible. Windsor was formed on July 17, 2001, at Quinn's direction, with the filing of  
25 Windsor's Articles of Organization with the Secretary of State. ~~Originally Quinn had a~~  
26 ~~registration for Windsor filed with the Secretary of State showing Kaye as the manager.~~ This  
27 was the only' documentation for Windsor. Nowhere did Quinn's name appear. In late July  
28 2001, he then asked Kaye to front for him in an attempt to sell. Limited and in fact Kaye

1 acted as managing member/owner in the Eden transaction and in dealing with Stericycle. He  
2 also was sent by Quinn to Limited back East to monitor operations and represent himself as  
3 the managing member of Windsor. Quinn claims that Kaye was only appointed to deal with  
4 specific sales or activities, but Quinn is the one who put him in a position to represent  
5 himself as owner of Windsor. It was Quinn who set up Windsor but never set up any formal  
6 ownership structure or had any documents prepared which identified him as being involved  
7 in Windsor. All of the assets that went through the various re-organizations ended up in  
8 Windsor. Windsor became a holding company with no ownership structure, and no  
9 connection with Quinn. When it was to his advantage in having Kaye step forward for  
10 specified transactions that benefited Quinn, he validates his authority. The court does not  
11 recognize, however, such selective delegations of authority, especially in a case where there  
12 is no documentation showing an owner of Windsor at all. Mr. Babos and Mr. Mitchell R.  
13 Miller (a corporation lawyer who drew up the Windsor documents for the Secretary of State)  
14 both testified that Quinn never set up any ownership structure because he wasn't sure how he  
15 wanted to do it. The only person placed in a position of apparent authority/ownership was  
16 Kaye. There is no evidence that either Quinn, or Babos or Miller did anything at all to  
17 remedy this uncompleted ownership structure after Quinn went to prison, thus enabling the  
18 later events to occur. The Court finds that Mr. Kaye was the sole managing member, and  
19 therefore sole owner, of Windsor Holdings from its inception in July 2001 through the  
20 transfer to Mr. Harkess in July 2003.

21  
22 When the Climaco emergency came, Mr. Kaye did not step forward to act as  
23 owner/manager, rather he wanted out, so it was agreed that he would transfer his  
24 member/owner status to Harkess. Rather than explain the dilemma to Mr. Climaco and seek  
25 a resolution with the Ohio court, counsel Babos, with the concurrence of Harkess and Kaye  
26 prepared the back-dated documents within a matter of hours and sent them to Climaco.  
27 Those documents were sent to Ohio with the knowledge that they were to be presented by  
28 Mr. Climaco, an officer of the court, to a federal judge representing that Mr. Harkess was the

1 owner of Windsor. And then everyone sat back and allowed others to rely on that  
2 representation. This court finds that Mr. Harkess is the owner of Windsor and became the  
3 owner with the transfer from Mr. Kaye in July 2003. That entire chain of events was created  
4 by the anonymous and incomplete creation of Windsor by Quinn, and the attempt to  
5 selectively assign ownership/authority to Kaye.

6  
7 The court is mindful that defendant contends that there was an agreement that Harkess  
8 was only taking the shares of Windsor temporarily and that he was to give them back after  
9 Quinn was released. Mr. Babos supports this purported agreement, as does Quinn, but  
10 Harkess vehemently denies it. There is evidence that Harkess said "If I own Limited by  
11 virtue of my ownership of Windsor, then I want the documents." This would suggest,  
12 however, that Harkess did indeed believe he owned Windsor although had some question as  
13 to what impact it had on ownership of Limited. Whether there was or was not such a private  
14 agreement between Quinn and Harkess is between them. As far as the rest of the world is  
15 concerned, Mr. Kaye transferred ownership of Windsor to Harkess and Harkess, Kaye and  
16 Babos represented to the federal court and the litigants that Harkess as the owner of Windsor.  
17 The transfer to Harkess was effective.

#### 18 19 UNCLEAN HANDS AND EQUITABLE ESTOPPEL

20 Further, in the exercise of its equitable powers, this court will not permit Quinn to  
21 now assert in ownership interest in Windsor. Plaintiff spent a great deal of the trial laying  
22 out the series of transactions involving the original purchase of Limited by Quinn with  
23 investor money and the use of various corporations to do so. Plaintiff made the point that  
24 Mr. Quinn's name personally did not appear on any of the documentation of these  
25 companies. For the most part the court found that to be true, based on the limited evidence  
26 presented on those issues. This court is being asked to take note of a pattern of ownership  
27 and apparent evasion of accountability to creditors and suppression of identity in order to  
28 establish the defense of unclean hands. This court is not making any findings as to whether



1 Mr. Quinn defrauded the original investors in connection with his use of their funds to  
2 purchase Limited. This court does take note, however, of this trail of companies, re-  
3 organizations and the resultant anonymity of Quinn for purposes of whether Quinn was  
4 attempting to hide his assets (i.e., Windsor's controlling interest in Worldwide and through  
5 Worldwide, ownership of Limited) in order to avoid any claims these investors might have.  
6 The court also takes note of the fact that Quinn never used any of his own money to purchase  
7 these companies. The court did not find credible his testimony that he also put his own  
8 money into Limited from the sale of luxury cars. No documentary or other evidence was  
9 presented to support that assertion.

10  
11 All of this is corroboration for the testimony of Mr. Quinn himself. Quinn testified on  
12 the stand that he created Windsor to "keep the assets of Sanitec away from Barbara Sager,  
13 Steve Ventre, Joe Delloiacovo and the investors in Ohio that were laying claim to those  
14 assets." He further testified that he asked Mr. Kaye to be the managing member because he  
15 was "having difficulties" and "troubles" at the time. It is clear that Quinn did not want his  
16 assets in his own name and in fact he also put his 80% interest in Sanitec West in the name  
17 of his friend Mary Reidinger rather than himself. This is sufficient evidence for the court to  
18 conclude that Quinn was secreting his assets to defeat the claims of his creditors and that he  
19 comes to this court with unclean hands. (See Alistead vs. Laumeister (1911) 16 Cal.App. 59  
20 and Belling vs. Croter (1943) 57 Cal.App.2d 296.)

21  
22 In addition, the court invokes the doctrine of equitable estoppel. While Mr. Quinn  
23 himself did not make the representations to those who relied and acted on them (the Ohio  
24 federal court and counsel and others related to that litigation), he is directly responsible for  
25 setting in motion the chain of events that led to those representations. He put Kaye and  
26 Harkess in the position of having apparent authority for and ownership of, Windsor from the  
27 point of view of the court and the parties in the East, to accomplish his own ends of selling  
28 off Limited without having his name in any way associated with the sale. Many have relied

1 on the resulting representations about Harkess' ownership of Windsor to their potential  
2 detriment in the event that transactions consummated in reliance hereon were to be  
3 overturned. Quinn is estopped from now claiming that the representations regarding  
4 ownership of Windsor are false, or that Kaye did not have authority to transfer the company  
5 to Harkess.

6  
7 Plaintiff Harkess to prepare the judgment consistent with this Tentative Ruling. This  
8 Tentative Ruling shall be the Statement of Decision unless within ten days either party  
9 specifies controverted issues or makes proposals not covered in the Tentative Ruling.

10  
11 Dated: 7/11/05

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14 JAMES R. DUNN  
15 Judge of the Superior Court  
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EXHIBIT C

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 LISA GILFORD (State Bar No. 171641)  
 SCOTT J. LEIPZIG (State Bar No. 192005)  
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Attorneys for Plaintiff and Cross-Defendant  
**JAMES HARKESS**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

JAMES HARKESS,  
 Plaintiff,

v.

TERRENCE QUINN aka TERRANCE LEE  
 QUATKEMEYER, and DOES 1 through 10,  
 inclusive,  
 Defendants.

Case No.: BC 311681  
 [Related to Case Nos. BC 330528  
 and BC 330527]

(Assigned for All Purposes to the  
 Honorable James R. Dunn – Dept. 26)

**[PROPOSED] JUDGMENT IN FAVOR  
 OF JAMES HARKESS**

AND RELATED CROSS-ACTION.

This action came on regularly for trial before the Court on March 28, 2005, at 8:30 a.m. in Department 26 of the above captioned court. Michael Hartley and Scott Leipzig of Weston Benshoof Rochefort Rubalcava & MacCuish LLP appeared on behalf of Plaintiff and Cross-Defendant James Harkess (“HARKESS”). Mark Hathaway of Slater Hathaway LLP and Peter Babos of the Law Offices of Peter Babos appeared on behalf of Defendants and Cross-Complainants Terrance Lee Quatkemeyer aka Terrence Quinn (“QUINN”) and James H. Smith, as Trustee of The Windsor Trust, u/d/t dated June 21, 2002 (“SMITH” and the purported “TRUST”) and Jeffrey Weinsten (“WEINSTEN”), as co-trustee of the TRUST.

1           The Court having heard and considered testimony, documentary evidence, and  
2 arguments presented by or on behalf of the parties, and having issued a Ruling and Statement  
3 of Decision (hereinafter, "Decision," a true and correct copy of which is attached hereto as  
4 Exhibit A and incorporated fully by reference herein), hereby orders the following Judgment  
5 to be entered in favor of HARKESS, with specific reference to the following findings of the  
6 Court:

7           (1) The purported TRUST "was not legally in existence and had no assets at  
8 the time of the transfer" of Windsor Holdings, LLC ("Windsor") from David Kaye ("Kaye")  
9 to HARKESS. (Decision, p. 1.) Any purported ownership of Windsor claimed by SMITH  
10 and Jeffrey Weinsten ("WEINSTEN") "is purely derivative based on their status as trustees  
11 of the Trust, and the court has found that the Trust was not legally in existence during the  
12 time of the transfer from Kaye to Harkess." (Decision, p. 2.)

13           (2) The transfer of Windsor from "Kaye to Harkess was effective to transfer  
14 ownership of Windsor to Harkess." (Decision, p. 1.) Windsor was formed in July 2001 and  
15 David Kaye became the managing member, and sole owner, of Windsor later that month;  
16 Harkess became the managing member, and sole owner, of Windsor upon transfer from  
17 Kaye in July 2003. Since July 2001, Windsor has held a controlling interest in Sanitec  
18 Worldwide, Ltd. ("Worldwide"), and Worldwide has been the sole shareholder of Sanitec,  
19 Ltd. ("Limited"). Accordingly, HARKESS "controls" Worldwide and Limited "by virtue of  
20 the ownership structure" of Windsor, Worldwide and Limited. (Decision, p. 2.)

21           (3) QUINN and those acting on his behalf, including SMITH and  
22 WEINSTEN, "are barred by the equitable doctrines of unclean hands and equitable estoppel  
23 from asserting ownership in Windsor." (Decision, p. 2.) The Court took note of the "trail of  
24 companies, re-organizations and the resultant anonymity of Quinn" and concluded that "[i]t  
25 is clear that Quinn did not want his assets in his own name and in fact he also put his 80%  
26 interest in Sanitec West in the name of his friend Mary Riedinger rather than himself. This is  
27 sufficient evidence for the court to conclude that Quinn was secreting his assets to defeat the  
28 claims of creditors and that he comes to the court with unclean hands." (Decision, p. 8.)

Moreover, QUINN "put Kaye and Harkess in the position of having apparent authority for and ownership of, Windsor from the point of view of the court and the parties in the East, to accomplish his own ends of selling off Limited without having his name in any way associated with the sale. Many have relied on the resulting representations about Harkess' ownership of Windsor to their potential detriment in the event that transactions consummated in reliance thereon were to be overturned." (*Id.*) "In the exercise of its equitable powers, this court will not permit Quinn to now assert an ownership interest in Windsor." (Decision, p. 7.)

NOW THEREFORE, consistent with these findings and all findings set forth in the Decision herein, IT IS HEREBY ADJUDGED AND DECREED THAT:

(1) Judgment is entered FOR Plaintiff and Cross-Defendant HARKESS and AGAINST Defendants and Cross-Complainants QUINN, SMITH and WEINSTEN on Plaintiff's Complaint for Declaratory Relief and on Defendants' Cross-Complaint for Declaratory Relief. The Court declares that HARKESS is the sole and rightful owner of Windsor and Windsor's assets, including but not limited to, Windsor's ownership interests in Worldwide and Limited. The Court further declares that Harkess controls Windsor, Worldwide and Limited. Neither QUINN, SMITH, WEINSTEN, nor any successor trustees or beneficiaries of the purported TRUST have any right, title or interest in Windsor and/or any Windsor asset, including but not limited to, Windsor's ownership interests in Worldwide and Limited;

(2) QUINN, SMITH, WEINSTEN and the successor trustees and beneficiaries of the purported TRUST, and each of them, as well as anyone acting on their behalf or in concert with them (hereinafter, "ENJOINED PARTIES"), are restrained and permanently enjoined from claiming any right, title or interest in Windsor and/or any Windsor asset, including but not limited to, Windsor's ownership interests in

1 Worldwide and Limited. The ENJOINED PARTIES are specifically  
2 restrained and permanently enjoined from making any representations  
3 that they have any ownership interest in or control over Windsor and/or  
4 any Windsor asset, including but not limited to, Windsor's ownership  
5 interests in Worldwide and Limited.  
6

7 IT IS SO ORDERED.  
8

9  
10 DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 Submitted by:

2 MICHAEL J. HARTLEY  
3 LISA GILFORD  
4 SCOTT J. LEIPZIG  
5 WESTON, BENSHOOF, ROCHEFORT,  
6 RUBALCAVA & MacCUISH LLP

7 Michael J. Hartley  
8 Attorneys for Plaintiff and Cross-Defendant  
9 JAMES HARKESS  
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**PROOF OF SERVICE**

I, Yolanda S. Ramos, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston Benshoof Rochefort Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On July 26, 2005, I served the document(s) described as PLAINTIFF AND CROSS-DEFENDANT JAMES R. HARKESS' OPPOSITION AND COUNTER-PROPOSALS TO DEFENDANTS' OBJECTIONS TO COURT'S PROPOSED STATEMENT OF DECISION on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston Benshoof Rochefort Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service: ] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston Benshoof Rochefort Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 26, 2005, at Los Angeles, California.

  
YOLANDA S. RAMOS



*Harkess v. Quinn, et al.*  
Los Angeles Superior Court, Case No. BC 311681

*Sanitec Worldwide, Ltd. v. Harkess, et al.*  
Los Angeles Superior Court  
Case No. BC 330528

*James H. Smith, et al. v. James R. Harkess, et al.*  
Los Angeles Superior Court  
Case No. BC 330527

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